

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
RAYMOND RHODES	:	DETERMINATION
	:	DTA NO. 808584
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1985.	:	

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Petitioner, Raymond Rhodes, 3 Alder Street, Red Hook, New York 12571, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1985.

A hearing was held before Catherine M. Bennett, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York, on October 21, 1992 at 1:15 P.M., with all briefs to be submitted by March 31, 1993. Petitioner appeared pro se and submitted his brief on March 31, 1993. The Division of Taxation, represented by William F. Collins, Esq. (Arnold M. Glass, Esq., of counsel), submitted no brief.

ISSUE

Whether the Division of Taxation properly imposed tax on petitioner, a New York resident, on income earned outside the State of New York.

FINDINGS OF FACT

On or about April 12, 1986, petitioner, Raymond Rhodes, filed Form IT-201, New York State Resident Income Tax Return, for the tax year 1985. Such return submitted into evidence indicates wages earned by petitioner for 1985 in the amount of \$44,660.00. Attached to the return was a copy of a Wage and Tax Statement, Form W-2, from International Business Machines("IBM") for the year 1985 indicating State or local wages in the amount of \$44,659.79.

A Statement of Audit Changes, dated December 29, 1988, was issued to petitioner

pertaining to tax year 1985. The Statement of Audit Changes added to current income the unreported wage amount of \$2,237.00 and the same resulted in additional personal income tax due for 1985 in the amount of \$211.47, plus interest. The statement bears the following explanation:

"AS AUTHORIZED BY SECTION 6103(D) OF THE INTERNAL REVENUE CODE, WE HAVE OBTAINED FROM THE INTERNAL REVENUE SERVICE THE AMOUNTS SHOWN ON YOUR FEDERAL TAX RETURN. THE ADJUSTMENT(S) SHOWN BELOW ARE BASED ON DISCREPANCIES FOUND WHEN WE COMPARED THE FEDERAL INFORMATION WITH YOUR NEW YORK RETURN.

"INTEREST IS DUE FOR LATE PAYMENT OR UNDERPAYMENT AT THE APPLICABLE RATE. INTEREST IS MANDATORY UNDER THE LAW.

"THE STARTING POINT FOR COMPUTING YOUR NEW YORK TAX IS FEDERAL ADJUSTED GROSS INCOME. YOUR TAX HAS BEEN RECOMPUTED AS SHOWN.

"WAGE INCOME REPORTED ON YOUR NEW YORK RETURN DOES NOT AGREE WITH THE AMOUNT REPORTED TO US BY THE INTERNAL REVENUE SERVICE."

Petitioner indicated that while employed for IBM he also held a position as a Naval Reserve officer in the Civil Engineering Corps. During an annual training program, as a commander, petitioner performed services for the Navy during February and March 1985 in London. The amount in question, \$2,237.00, was earned as a result of services performed for the U.S. Navy during the training program. Petitioner does not dispute his residency in New York during the period in issue.

The Division of Taxation ("Division") issued to petitioner a Notice of Deficiency dated March 16, 1989 indicating additional personal income tax due for the year 1985 in the amount of \$211.47, plus interest of \$48.05, for a total amount due of \$259.52.

On or about May 31, 1989, petitioner requested a conciliation conference stating his belief that the amount earned by him overseas is not subject to taxation by New York State since its jurisdiction does not extend beyond the borders of the State. On May 1, 1990, a conciliation conference was held and, by a Conciliation Order dated June 8, 1990, the statutory notice was upheld.

Petitioner thereafter requested a hearing before the Division of Tax Appeals. The Division of Tax Appeals received the petition on August 24, 1990. The Division filed its answer on or about August 29, 1991 asserting it properly taxed petitioner as a New York resident.

#### SUMMARY OF THE PARTIES' POSITIONS

It is petitioner's belief that the New York Tax Law has no jurisdiction to impose and/or collect New York taxes on income earned and received outside the State of New York. Petitioner asserts the issue is not whether a person is a resident or a nonresident, but rather maintains that one must look to the source of income within or without the State. Petitioner asserts that the Tax Law inconsistently treats income earned outside New York; is discriminatory against New York residents; has a flawed definition of New York income by linking the same to the Internal Revenue Service ("IRS") definition of income without provision for adjustment; and improperly extends New York tax jurisdiction beyond the State due to such flawed definition.

The Division maintains that as a New York resident under the Tax Law petitioner is properly subject to income tax on amounts earned in any geographic location. The Division indicates that Federal adjusted gross income is the starting point for New York taxation and thereafter certain modifications increasing and decreasing New York adjusted gross income are allowed. However, there is no exclusion for income earned elsewhere. The Division notes New York Tax Law permits a credit for taxes paid to other jurisdictions for income earned outside New York and taxes paid on such income.

#### CONCLUSIONS OF LAW

A. Tax Law § 612(a) states:

"The New York adjusted gross income of a resident individual means his Federal adjusted gross income as defined in the laws of the United States for the taxable year, with the modifications specified in this section [not applicable in this matter]."

Adjusted gross income, defined with reference to "gross income", means all income from whatever source derived, including but not limited to compensation for services (Internal

Revenue Code §§ 61, 62).

B. The power of taxation is vested in the sovereign which exercises the power through legislative enactment; thus, the State Legislature and no other branch of government has the power to tax. In New York the taxing system is codified in the Real Property Tax Law and the Tax Law, although some tax levies are imposed by other statutes (58 NY Jur, Taxation, § 8). Subject to Federal and State constitutional restrictions, the legislative authority over the subject of taxation is supreme and all inclusive (id. at § 12). It has long been held that:

"the power of taxation being legislative, all the incidents are within the control of the legislature. The purposes for which a tax shall be levied; the extent of taxation; the apportionment of the tax; upon what property or class of persons the tax shall operate; . . . are matters within the discretion of the legislature and in respect to which its determination is final" (Feld v. Hanna, 4 Misc 2d 3, 158 NYS2d 94, 96, citing Genet v. City of Brooklyn, 99 NY 296).

C. Although petitioner claims he does not take issue with the constitutionality of New York's authority to impose taxes, he asserts that it is an improper practice by the Division to tax income sources derived outside New York for services performed outside the State where its jurisdiction does not exist. In essence, petitioner asserts that the provisions of resident taxation are unconstitutional. The jurisdiction of the Division of Tax Appeals and the Tax Appeals Tribunal, as prescribed by its enabling legislation, does not encompass challenges to the constitutionality of a statute on its face (Matter of Brussel, Tax Appeals Tribunal, June 25, 1992; Matter of Wizard Corp., Tax Appeals Tribunal, January 12, 1989). At this level of administrative review, it is presumed that the statutes are constitutional. Further, petitioner has not presented any evidence to show that the governing section of the Tax Law was unconstitutionally applied.

D. In Matter of Robbins (Tax Appeals Tribunal, May 23, 1991), where the taxpayer also argued that his residency in New York State was irrelevant and the controlling factor as to the taxability of earned income was the source, i.e., another state, the Tribunal ruled that the income earned as a New York resident, though outside New York during the period in issue, was includable in his New York taxable income. Accordingly, the Division has established that it properly taxed petitioner as a resident of New York on the income earned outside New York

during 1985.

E. The petition of Raymond Rhodes is denied and the Notice of Deficiency dated March 16, 1989 is hereby sustained.

DATED: Troy, New York  
September 9, 1993

/s/ Catherine M. Bennett  
ADMINISTRATIVE LAW JUDGE